

AMENDED IN ASSEMBLY JANUARY 9, 2006

AMENDED IN ASSEMBLY JANUARY 4, 2006

AMENDED IN ASSEMBLY AUGUST 29, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1363

Introduced by Assembly Member Jones

February 22, 2005

~~An act to amend Sections 1850 and 2620 of the Probate Code, relating to conservatorships and guardianships. An act to add Chapter 6 (commencing with Section 6500) to Division 3 of the Business and Professions Code, to amend Sections 1822, 1826, 1829, 1850, 1851, 2250, 2253, 2321, 2340, 2342, 2343, 2620, 2620.2, 2623, 2640, 2641, 2850, 2851, 2852, 2853, 2854, 2855, and 2920 of, to add Sections 1456, 1457, 1458, 2250.1, 2250.2 and 2410 to, and to repeal Sections 2342.5, 2344, and 2640.1 of, the Probate Code, and to add Division 8.7 (commencing with Section 9800) to the Welfare and Institutions Code, relating to conservatorship and guardianship.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, as amended, Jones. ~~Conservatorships and guardianships.~~ *Omnibus Conservatorship and Guardianship Reform Act of 2006.*

Existing law governs the establishment of conservatorships and guardianships. Existing law requires conservators and guardians to present a biennial accounting of the assets of the conservatee or ward and requires a biennial review of each conservatorship. Existing law requires the Department of Justice to maintain a statewide registry of conservators, guardians, and trustee. A court may not appoint a

person as a conservator, guardian, or trustee unless that person is registered if he or she is required to do so.

This bill would enact the Omnibus Conservatorship and Guardianship Reform Act of 2006. The act would require professional conservators and guardians to be licensed and would prohibit a court from appointing nonlicensed professional conservators and guardians. The bill would require the Department of Consumer Affairs to establish and administer a licensing program for professional conservators and guardians, as defined. The bill would establish educational and training criteria for applicants for licensure. The bill would require the department to establish a licensing board to administer the program and to draft a fiduciaries' code of ethics. The bill would require the board to establish a complaint committee that would take disciplinary action, as appropriate, and make referrals to the Attorney General for violations of the statute or a breach of fiduciary duty. The bill would also remove conservators and guardians from the provisions governing registry, and require that the registry for trustees be maintained by the Department of Consumer Affairs, rather than the Justice Department.

The bill would require the Judicial Council to adopt specified rules of court relating to conservatorships and guardianships and to enact educational programs for nonlicensed conservators and guardians. The bill would also require the Judicial Council to establish qualifications and educational classes for probate court attorneys and investigators, to require educational classes for probate judges and public guardians, to establish conservatorship accountability measures, and to develop a form to provide notice regarding free assistance provided by the court to conservators.

The bill would also make various changes to provisions governing conservatorship, including requiring an annual, rather than a biennial, review of conservatorships at a noticed hearing, requiring conservators and guardians to present an annual, rather than a biennial, accounting, prohibiting a court from reducing the amount of a bond in conservatorship proceedings without good cause, and imposing new duties on court investigators with respect to cases involving proposed conservatees, among other changes.

The bill would establish in the California Department of Aging the Office of Conservatorship Ombudsman to collect and analyze data relative to complaints about conservatorships and to investigate and

resolve complaints and concerns communicated by or on behalf of conservatees.

~~Existing law provides for the periodic review by the court of a conservatorship not less frequently than biennially. Existing law also requires a guardian or conservator to present the accounting of the assets of the estate of the ward or conservatee to the court not less frequently than biennially.~~

~~This bill would require those actions to be taken not less frequently than annually.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Omnibus Conservatorship and Guardianship Reform Act of*
3 *2006.*

4 *SEC. 2. The Legislature finds and declares the following:*

5 *(a) California has the fastest growing population in the*
6 *country, and the rate of increase in the number of people who are*
7 *65 years of age or older is surpassing that in other states. The*
8 *number of people who are 65 years of age will grow from 3.7*
9 *million people in the year 2000, to 6.3 million in the year 2020.*
10 *The fastest growing segment of California's population, expected*
11 *to increase by 148 percent between the years 1990 and 2020, is*
12 *people who are 85 years of age or older. As many as 10 percent*
13 *of the population over 65 years of age and 25 percent of the*
14 *population over 85 years of age will suffer from Alzheimer's*
15 *disease.*

16 *(b) As the population of California continues to grow and age,*
17 *an increasing number of persons in the state are unable to*
18 *provide properly for their personal needs, to manage their*
19 *financial resources, or to resist fraud or undue influence.*

20 *(c) One result of these trends is the growing number of*
21 *persons acting as conservators on behalf of other persons or*
22 *their estates. It is estimated that about 500 professional*
23 *conservators oversee \$1.5 billion in assets. Over 5,000*
24 *conservatorship petitions are filed each year in California.*

25 *(d) Probate courts oversee the work of conservators, but, in*
26 *part due to a lack of resources and conflicting priorities, courts*

1 often do not provide sufficient oversight in conservatorship cases
2 to ensure that the best interests of conservatees are protected.

3 (e) Professional fiduciaries are not adequately regulated at
4 present. This lack of regulation can result in the neglect, or the
5 physical or financial abuse, of the clients professional fiduciaries
6 are supposed to serve. For that reason, it is necessary to create a
7 program to license certain professional fiduciaries in order to
8 protect the public health, safety, and welfare.

9 (f) Public guardians do not have adequate resources to
10 represent the best interests of qualifying Californians and,
11 therefore, many in need of the assistance of a conservator go
12 without.

13 (g) As a result, the conservatorship system in California is
14 fundamentally flawed and in need of reform.

15 SEC. 3. Chapter 6 (commencing with Section 6500) is added
16 to Division 3 of the Business and Professions Code, to read:

17
18 CHAPTER 6. PROFESSIONAL CONSERVATORS AND
19 GUARDIANS ACT
20

21 6500. This chapter shall be known and may be cited as the
22 Professional Conservators and Guardians Act.

23 6501. As used in this chapter, the following terms have the
24 following meanings:

25 (a) "Board" means the licensing board established by the
26 Department of Consumer Affairs pursuant to Section 6504.

27 (b) "Client" means the individual served by a professional
28 conservator or guardian.

29 (c) "Department" means the Department of Consumer Affairs.

30 (d) "Professional conservator or guardian" means a person
31 who, for compensation, acts as a conservator or guardian for
32 two or more persons not related to the professional conservator
33 or guardian or each other by blood, adoption, or marriage,
34 registered domestic partnership, or a relationship that satisfies
35 the requirements of subdivision (a) and paragraphs (1) to (4),
36 inclusive, and paragraph (6) of subdivision (b) of Section 297 of
37 the Family Code. Professional conservator or guardian also
38 means a person, employed by a public agency or financial
39 institution, acting as a conservator or guardian, who makes
40 substantive fiduciary decisions or supervises persons who make

1 substantive fiduciary decisions. A “professional conservator or
2 guardian” does not include the following:

3 (1) Any conservator or guardian who is not required to file
4 information with the clerk of the court pursuant to Section 2340
5 of the Probate Code, to any person or entity subject to the
6 oversight of a local government, including an employee of a city,
7 county, or city and county, or to any person or entity subject to
8 the oversight of the state or federal government, including an
9 attorney licensed to practice law in the State of California who
10 acts as trustee of only attorney client trust accounts, as defined in
11 Section 6211.

12 (2) Any conservator who resided in the same home with the
13 conservatee immediately prior to the condition or event that gave
14 rise to the necessity of a conservatorship. This subdivision does
15 not create any order or preference of appointment, but simply
16 exempts a conservator described by this subdivision from
17 licensure.

18 (3) A nonrelated guardian of the person of a minor appointed
19 by the court as the result of the selection of a permanency plan
20 for a dependent child or ward pursuant to Section 366.26 of the
21 Welfare and Institutions Code. It also does not include a
22 nonrelated guardian of the person of a minor appointed pursuant
23 to Section 1514 of the Probate Code if that child is in receipt of
24 AFDC-FC payments and case management services from the
25 county welfare department, as evidenced by a Notice of Action of
26 AFDC-FC eligibility.

27 6502. A person applying for licensure as a professional
28 conservator or guardian shall meet all of the following
29 requirements:

- 30 (a) Be at least 21 years of age.
31 (b) Be a United States citizen.
32 (c) Have no felony convictions.
33 (d) Have submitted fingerprints for state and Federal Bureau
34 of Investigation criminal history background checks.
35 (e) Have completed the mandatory 15 hours of prelicensing
36 training.
37 (f) Have passed the licensing examination.
38 (g) Meet the qualifications for private professional
39 conservators or private professional guardians as required
40 pursuant to Sections 2342.5, 2344, and 2850 provided that those

1 professional conservators and guardians with pending cases as
2 of January 1, 2006 shall satisfy the required qualifications.

3 (h) Have agreed to adhere to the Professional Fiduciaries'
4 Code of Ethics.

5 (i) Have submitted an application for licensure.

6 (j) Have paid a nonrefundable application fee in an amount
7 determined by the boards that includes all costs associated with
8 the board, including investigatory costs.

9 6503. No person shall act as a professional conservator or
10 guardian unless that person is licensed as a professional
11 conservator or guardian in accordance with the provisions of
12 this chapter. A court shall not appoint a professional conservator
13 or guardian to serve unless that professional conservator or
14 guardian is licensed. A court shall not appoint a public agency
15 or financial institution to act as a conservator or guardian,
16 unless the public agency or financial institution certifies that it
17 has at least one professional conservator or guardian on its staff,
18 and that all persons who meet the definition of a professional
19 conservator or guardian in subdivision (d) of Section 6501 are
20 licensed.

21 6504. The department shall establish a licensing board whose
22 membership shall be comprised of nine members selected by the
23 department. The members shall include four professional
24 fiduciaries, including one from the public sector who shall be a
25 member of the California State Association of Public
26 Administrators, Public Guardians, and Public Conservators, and
27 two from the private sector at least one of whom shall be a
28 member of the Professional Fiduciary Association of California.
29 The remaining members shall include a department employee, an
30 employee of the Judicial Council of California, a court
31 investigator, a member of the State Bar of California who is
32 certified as a specialist in probate, estate planning, and trust law,
33 and the Conservator Ombudsman.

34 6505. (a) Except as otherwise specified in Section 6508, the
35 board shall be responsible for administering the licensing
36 program established in this chapter.

37 (b) The board shall meet at least quarterly to vote to approve
38 or deny licensure to those applicants recommended to the board
39 by the department. If the board approves the application for
40 licensure, it shall notify the department, which shall notify the

1 applicant and forward the applicant's name as a licensee to the
2 statewide registry. The department shall provide the licensee
3 with a certificate identifying him or her as a "licensed
4 professional conservator or guardian." If the board denies the
5 application for licensure, it shall notify the department, which
6 shall give the applicant notice of the denial and the right to
7 appeal that denial to the board.

8 (c) The board shall approve classes qualifying for the 15
9 hours of prelicense training, as well as classes qualifying for the
10 annual continuing education requirement established by this
11 chapter.

12 (d) The board shall maintain a current list of all approved
13 classes.

14 (e) The board shall arrange for the preparation and
15 administration of licensing examinations.

16 (f) The board shall establish a complaint committee,
17 comprised of three of its members, which shall receive
18 complaints regarding the actions of a professional conservator
19 or guardian. The complaint committee shall review a
20 professional conservator or guardian's alleged violation of
21 statute or the Professional Fiduciary's Code of Ethics, and any
22 other complaint referred to it by the department, and shall
23 impose sanctions or refer to the Attorney General for further
24 prosecution upon a finding of a violation or a breach of fiduciary
25 duty. Sanctions shall include any of the following:

26 (1) Censure, either private or public.

27 (2) Suspension of the professional conservator or guardian's
28 license.

29 (3) Revocation of the professional conservator or guardian's
30 license.

31 (4) Filing of a civil or criminal court action, or both, by the
32 Attorney General, as appropriate.

33 (g) If the complaint committee imposes any of the sanctions
34 listed in paragraph (1), (2), or (3) of subdivision (f), it shall
35 notify the licensee in writing of the imposition of the sanctions,
36 and of the licensee's right to appeal the imposition of those
37 sanctions within 60 days of the receipt of the notice of the
38 imposition of sanctions and shall notify all courts in which the
39 license has conservatorships or guardianship cases of the
40 sanction imposed.

1 (h) The board shall set the fees to be paid for the licensing
2 application and examination, as well as the fee to be paid for
3 license renewal. The cost shall not be borne by the conservatee
4 or ward.

5 6506. Board members shall be volunteers and shall not be
6 compensated for serving, but shall be reimbursed for expenses
7 incurred in the performance of their duties. Fees collected for the
8 license applications and renewals, as well as the licensing
9 examination, shall be deposited in the Professional Fiduciary
10 Fund in the State Treasury, which is hereby created. The money
11 in the fund, upon appropriation, shall be used to defray board
12 expenses.

13 6507. Board members shall be immune from liability for any
14 act taken pursuant to this chapter, provided that they have acted
15 in good faith.

16 6508. The department shall review all applications for
17 licensure and refer those recommended for approval to the
18 board. The department shall not recommend approval for any
19 applicant who comes within any of the following descriptions:

20 (a) Has not met the qualifications for licensure under this
21 chapter.

22 (b) Has been convicted of any crime related to the functions
23 and duties of a fiduciary.

24 (c) Engages in fraud or deceit in applying for licensure under
25 this chapter.

26 (d) Has been found to have engaged in dishonesty, fraud, or
27 gross negligence in performing the functions or duties of a
28 professional conservator or guardian prior to the effective date
29 of this chapter.

30 (e) Has been removed as a fiduciary by a court for breach of
31 fiduciary duty prior to the effective date of this chapter, and all
32 appeals have been taken, or the time to file an appeal has
33 expired.

34 6509. (a) To qualify for licensure, applicants shall have
35 completed 15 hours of prelicensing education provided by a
36 board-approved educational program.

37 (b) To remain licensed, a licensee shall complete 15 hours of
38 approved continuing education courses each year, and shall pay
39 the annual renewal fee set by the board. Completion of 15 hours
40 of approved continuing education courses shall not be required

1 *in the year in which the professional conservator or guardian is*
2 *initially licensed.*

3 *(c) The cost of any educational program mandated by this*
4 *chapter shall not be borne by any client served by a professional*
5 *conservator or guardian.*

6 *6510. As a requirement for licensure, applicants shall take*
7 *and pass the licensing examination administered by the board.*
8 *The board shall determine the cost of the examination, and the*
9 *frequency with which it shall be administered.*

10 *6511. An applicant notified of the denial of his or her*
11 *application for licensure shall have the right to appeal to the*
12 *board. The appeal shall be filed within 60 days of the date of the*
13 *notice of denial.*

14 *6512. A person who has been notified of the approval of his*
15 *or her application for licensure may identify himself or herself as*
16 *a "licensed professional conservator or guardian."*

17 *6513. Individuals, entities, agencies, and associations that*
18 *propose to offer educational programs qualifying for the*
19 *prelicensing educational or continuing educational requirements*
20 *of this chapter shall apply for, and obtain approval by the board.*

21 *6514. (a) Licenses shall expire on December 31 of each year,*
22 *except in the year a person is initially licensed, in which case the*
23 *license expires on December 31 of the following year.*

24 *(b) A license may be renewed upon proof of the licensee's*
25 *compliance with the continuing education requirements of this*
26 *chapter, and payment of the renewal fee set by the board,*
27 *provided that the licensee has not engaged in conduct that would*
28 *justify the board's refusal to grant the renewal. Acts justifying*
29 *the board's refusal to renew a license shall include any of the*
30 *following:*

31 *(1) Conviction of any crime related to the qualifications,*
32 *functions, and duties of a professional conservator or guardian.*

33 *(2) Fraud or deceit in obtaining a license under this chapter.*

34 *(3) Dishonesty, fraud, or gross negligence of the professional*
35 *conservator or guardian in performing the functions or duties of*
36 *a professional conservator or guardian.*

37 *(4) Removal by a court for breach of fiduciary duty, if all*
38 *appeals have been taken, or the time to file an appeal has*
39 *expired.*

1 6515. The department shall perform an initial review of a
2 complaint, and shall do one of the following:

3 (a) Determine that the complaint is not adequately
4 documented, in which case, it shall return the complaint to the
5 complainant with direction to provide further documentation.

6 (b) Determine that the complaint appears to be frivolous, in
7 which case, it shall forward the complaint to the complaint
8 committee with the recommendation that the complaint be
9 dismissed as frivolous.

10 (c) Determine that the complaint relates to a specific case, and
11 is either currently under review by the court, or has not yet been
12 presented to a court for resolution, in which case the complaint
13 shall be returned to the complainant for initial resolution by the
14 court.

15 (d) If the department, after investigation, determines that the
16 complaint appears to be meritorious, it shall notify the complaint
17 committee and the Attorney General in writing of the complaint
18 and shall recommend disciplinary action. The complaint
19 committee shall notify the professional conservator or guardian
20 in writing of the complaint, and shall request a response with
21 supporting documentation by a specified date.

22 (e) Each complaint that is referred to the complaint committee
23 for investigation, shall be simultaneously and jointly assigned to
24 an investigator in the Attorney General's office responsible for
25 prosecuting the case if the investigation results in a court filing
26 against the conservator. The assignment of the investigator shall
27 exist for the duration of the disciplinary matter. During the
28 assignment, the investigator so assigned shall, under the
29 direction of a deputy attorney general, be responsible for
30 obtaining the evidence required to permit the Attorney General
31 to advise the board on legal matters such as whether a formal
32 complaint should be filed, the complaint should be dismissed for
33 a lack of evidence required to meet the applicable burden of
34 proof, or take other appropriate legal action.

35 (f) The board, the Department of Consumer Affairs, and the
36 Attorney General shall, if necessary, enter into an inter-agency
37 agreement to implement this section.

38 6516. The board shall draft the Professional Fiduciaries'
39 Code of Ethics. Copies of the Professional Fiduciaries' Code of
40 Ethics shall be provided to persons who request an application

1 for licensure. The board may amend the Professional
2 Fiduciaries' Code of Ethics from time to time, as it deems
3 necessary, provided that no amendment shall be effective until
4 the next annual renewal of a professional conservator or
5 guardian's license. Any amendment to the Professional
6 Fiduciaries' Code of Ethics shall be included in the license
7 renewal materials sent to the licensee.

8 SEC. 4. Section 1456 is added to the Probate Code, to read:

9 1456. (a) On or before July 1, 2007, the Judicial Council
10 shall adopt a rule of court that shall do all of the following:

11 (1) Specifies the qualifications of a probate court attorney and
12 investigator.

13 (2) Specifies the number of hours of education in classes
14 related to conservatorships or guardianships that a probate
15 judge, probate court attorney, probate court investigator and
16 public guardian shall complete each year.

17 (3) Specifies the particular subject matter that shall be
18 included in the education required each year.

19 (4) Requires a probate judge, probate court attorney, probate
20 court investigator and public guardian to certify to the court the
21 completion of the yearly specified hours of education.

22 (b) In formulating the rule required by this section, the
23 Judicial Council shall consult with interested parties, including,
24 but not limited to, the California Judges Association, the
25 California Association of Superior Court Investigators,
26 California State Association of Public Administrators, Public
27 Guardians, and Public Conservators, the California Bar
28 Association, the National Guardianship Association, and the
29 Association of Professional Geriatric Care Managers.

30 SEC. 5. Section 1457 is added to the Probate Code, to read:

31 1457. In order to assist relatives and friends who may seek
32 appointment as a nonprofessional conservator or guardian:

33 (a) The Judicial Council shall develop a short educational
34 program of no more than three hours and shall make that
35 program available free of charge to each conservator and
36 guardian who is not required to be licensed as a professional
37 conservator or guardian pursuant to Chapter 6 (commencing
38 with Section 6500) of Division 3 of the Business and Professions
39 Code. The program may be available by video or Internet access
40 in addition to in person access.

1 (b) Each probate court shall provide free assistance to
2 conservators and guardians who are not required to be licensed
3 as professional conservators or guardians pursuant to Chapter 6
4 (commencing with Section 6500) of Division 3 of the Business
5 and Professions Code in understanding the conservatorship or
6 guardianship court process and in completing necessary court
7 forms.

8 SEC. 6. Section 1458 is added to the Probate Code, to read:

9 1458. (a) On or before January 1, 2007, the Judicial Council
10 shall develop conservatorship accountability measures for use by
11 each court. The measures shall include at a minimum:

12 (1) The number of temporary conservatorships requested and
13 the number granted, noting the number of hearings in which
14 notice was waived, the number of hearings in which the proposed
15 conservatee attended the hearing, the number of contested
16 hearings, and whether the proposed conservator was a
17 professional conservator, the public guardian, or a family and
18 friend not required to register under Chapter 6 (commencing
19 with Section 6500) of Division 3 of the Business and Professions
20 Code.

21 (2) The number of permanent conservatorships requested and
22 the number granted, noting the number of hearings in which the
23 proposed conservatee attended the hearing, the number of
24 contested hearings, and whether the proposed conservator was a
25 professional conservator, the public guardian, or a family
26 member or friend not required to register under Chapter 6
27 (commencing with Section 6500) of Division 3 of the Business
28 and Professions Code.

29 (3) The number of accountings filed (A) over 30 days late and
30 (B) over 90 days late.

31 (b) Each court shall collect conservatorship accountability
32 data and report that data to Judicial Council every quarter. The
33 Judicial Council shall report that data annually to the
34 Legislature.

35 SEC. 7. Section 1822 of the Probate Code is amended to
36 read:

37 1822. (a) At least 15 days before the hearing on the petition
38 for appointment of a conservator, notice of the time and place of
39 the hearing shall be given as provided in this section. The notice
40 shall include information about free assistance provided by the

1 court to conservators pursuant to Section 1457 and about the
2 complaint process available through the Conservator
3 Ombudsman established pursuant to Section 9800 of the Welfare
4 and Institutions Code. The notice shall be accompanied by a
5 copy of the petition. The court may not shorten the time for
6 giving the notice of hearing under this section.

7 (b) Notice shall be mailed to the following persons:

8 (1) The spouse, if any, or domestic partner, if any, of the
9 proposed conservatee at the address stated in the petition.

10 (2) The relatives named in the petition at their addresses stated
11 in the petition.

12 (c) If notice is required by Section 1461 to be given to the
13 Director of Mental Health or the Director of Developmental
14 Services, notice shall be mailed as so required.

15 (d) If the petition states that the proposed conservatee is
16 receiving or is entitled to receive benefits from the Veterans
17 Administration, notice shall be mailed to the office of the
18 Veterans Administration referred to in Section 1461.5.

19 (e) If the proposed conservatee is a person with developmental
20 disabilities, at least 30 days before the day of the hearing on the
21 petition, the petitioner shall mail a notice of the hearing and a
22 copy of the petition to the regional center identified in Section
23 1827.5.

24 (f) *The Judicial Council shall, on or before July 1, 2007,*
25 *develop a form to effectuate the notice required in subdivision*
26 *(a).*

27 SEC. 8. *Section 1826 of the Probate Code is amended to*
28 *read:*

29 1826. Regardless of whether the proposed conservatee
30 attends the hearing, the court investigator shall do all of the
31 following:

32 (a) Interview the proposed conservatee personally.

33 (b) Inform the proposed conservatee of the contents of the
34 citation, of the nature, purpose, and effect of the proceeding, and
35 of the right of the proposed conservatee to oppose the
36 proceeding, to attend the hearing, to have the matter of the
37 establishment of the conservatorship tried by jury, to be
38 represented by legal counsel if the proposed conservatee so
39 chooses, and to have legal counsel appointed by the court if
40 unable to retain legal counsel.

1 (c) Determine whether it appears that the proposed
2 conservatee is unable to attend the hearing and, if able to attend,
3 whether the proposed conservatee is willing to attend the hearing.

4 (d) Review the allegations of the petition as to why the
5 appointment of the conservator is required and, in making his or
6 her determination, do the following:

7 (1) Refer to the supplemental information form submitted by
8 the petitioner and consider the facts set forth in the form that
9 address each of the categories specified in paragraphs (1) to (5),
10 inclusive, of subdivision (a) of Section 1821.

11 (2) Consider, to the extent practicable, whether he or she
12 believes the proposed conservatee suffers from any of the mental
13 function deficits listed in subdivision (a) of Section 811 that
14 significantly impairs the proposed conservatee's ability to
15 understand and appreciate the consequences of his or her actions
16 in connection with any of the functions described in subdivision
17 (a) or (b) of Section 1801 and identify the observations that
18 support that belief.

19 (e) Determine whether the proposed conservatee wishes to
20 contest the establishment of the conservatorship.

21 (f) Determine whether the proposed conservatee objects to the
22 proposed conservator or prefers another person to act as
23 conservator.

24 (g) Determine whether the proposed conservatee wishes to be
25 represented by legal counsel and, if so, whether the proposed
26 conservatee has retained legal counsel and, if not, the name of an
27 attorney the proposed conservatee wishes to retain.

28 (h) Determine whether the proposed conservatee is capable of
29 completing an affidavit of voter registration.

30 (i) *To the greatest extent possible, personally interview the*
31 *relatives of the proposed conservatee set forth in subdivision (b)*
32 *of Section 1821 before the hearing.*

33 (j) If the proposed conservatee has not retained legal counsel,
34 determine whether the proposed conservatee desires the court to
35 appoint legal counsel.

36 (j)

37 (k) Determine whether the appointment of legal counsel would
38 be helpful to the resolution of the matter or is necessary to
39 protect the interests of the proposed conservatee in any case
40 where the proposed conservatee does not plan to retain legal

1 counsel and has not requested the appointment of legal counsel
2 by the court.

3 ~~(k)~~

4 (l) Report to the court in writing, at least five days before the
5 hearing, concerning all of the foregoing, including the proposed
6 conservatee's express communications concerning both of the
7 following:

8 (1) Representation by legal counsel.

9 (2) Whether the proposed conservatee is not willing to attend
10 the hearing, does not wish to contest the establishment of the
11 conservatorship, and does not object to the proposed conservator
12 or prefer that another person act as conservator.

13 ~~(l)~~

14 (m) Mail, at least five days before the hearing, a copy of the
15 report referred to in subdivision (k) to all of the following:

16 (1) The attorney, if any, for the petitioner.

17 (2) The attorney, if any, for the proposed conservatee.

18 (3) Any other persons as the court orders.

19 ~~(m)~~

20 (n) The court investigator has discretion to release the report
21 required by this section to the public conservator, interested
22 public agencies, and the long-term care ombudsman.

23 ~~(n)~~

24 (o) The report required by this section is confidential and shall
25 be made available only to parties, persons given notice of the
26 petition who have requested this report or who have appeared in
27 the proceedings, their attorneys, and the court. The court has
28 discretion at any other time to release the report, if it would serve
29 the interests of the conservatee. The clerk of the court shall
30 provide for the limitation of the report exclusively to persons
31 entitled to its receipt.

32 ~~(o)~~

33 (p) This section does not apply to a proposed conservatee who
34 has personally executed the petition for conservatorship, or one
35 who has nominated his or her own conservator, if he or she
36 attends the hearing.

37 ~~(p)~~

38 (q) If the court investigator has performed an investigation
39 within the preceding six months and furnished a report thereon to
40 the court, the court may order, upon good cause shown, that

1 another investigation is not necessary or that a more limited
2 investigation may be performed.

3 *SEC. 9. Section 1829 of the Probate Code is amended to*
4 *read:*

5 1829. (a) Any of the following persons may appear at the
6 hearing to support or oppose the petition:

7 ~~(a)~~

8 (1) The proposed conservatee.

9 ~~(b)~~

10 (2) The spouse or domestic partner of the proposed
11 conservatee.

12 ~~(c)~~

13 (3) A relative of the proposed conservatee.

14 ~~(d)~~

15 (4) Any interested person or friend of the proposed
16 conservatee.

17 (b) *The court shall inform any of the persons set forth in (a)*
18 *who appear at the hearing about the free assistance provided by*
19 *the court conservators pursuant to Section 1457.*

20 *SEC. 10. Section 1850 of the Probate Code is amended to*
21 *read:*

22 1850. (a) Except as provided in subdivision (b), each
23 conservatorship initiated pursuant to this part shall be reviewed
24 by the court ~~one year~~ *at a noticed hearing six months* after the
25 appointment of the conservator and ~~biennially~~ *annually*
26 thereafter.

27 (b) *Notice of the hearing shall be provided to all persons listed*
28 *in subdivision (b) of Section 1822.*

29 (c) This chapter does not apply to either of the following:

30 (1) A conservatorship for an absentee as defined in Section
31 1403.

32 (2) A conservatorship of the estate for a nonresident of this
33 state where the conservatee is not present in this state.

34 *SEC. 11. Section 1851 of the Probate Code is amended to*
35 *read:*

36 1851. (a) When court review is required, the court
37 investigator shall, *without prior notice to the conservator*, visit
38 the conservatee. The court investigator shall inform the
39 conservatee personally that the conservatee is under a
40 conservatorship and shall give the name of the conservator to the

1 conservatee. The court investigator shall determine whether the
2 conservatee wishes to petition the court for termination of the
3 conservatorship, whether the conservatee is still in need of the
4 conservatorship, whether the present conservator is acting in the
5 best interests of the conservatee, and whether the conservatee is
6 capable of completing an affidavit of voter registration. If the
7 court has made an order under Chapter 4 (commencing with
8 Section 1870), the court investigator shall determine whether the
9 present condition of the conservatee is such that the terms of the
10 order should be modified or the order revoked.

11 (b) The findings of the court investigator, including the facts
12 upon which the findings are based, shall be certified in writing to
13 the court not less than 15 days prior to the date of review. A copy
14 of the report shall be mailed to the conservator and to the
15 attorneys of record for the conservator and conservatee at the
16 same time it is certified to the court.

17 (c) In the case of a limited conservatee, the court investigator
18 shall make a recommendation regarding the continuation or
19 termination of the limited conservatorship.

20 (d) The court investigator may personally visit the conservator
21 and other persons as may be necessary to determine whether the
22 present conservator is acting in the best interests of the
23 conservatee.

24 (e) The report required by this section shall be confidential and
25 shall be made available only to parties, persons given notice of
26 the petition who have requested the report or who have appeared
27 in the proceeding, their attorneys, and the court. The court shall
28 have discretion at any other time to release the report if it would
29 serve the interests of the conservatee. The clerk of the court shall
30 make provision for limiting disclosure of the report exclusively
31 to persons entitled thereto under this section.

32 *SEC. 12. Section 2250 of the Probate Code is amended to*
33 *read:*

34 2250. (a) On or after the filing of a petition for appointment
35 of a guardian or conservator, any person entitled to petition for
36 appointment of the guardian or conservator may file a petition for
37 appointment of:

38 (1) A temporary guardian of the person or estate or both.

39 (2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 12 years of age or older or to the proposed conservatee, to the parent or parents if the proposed ward is a minor, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated and that the petitioner is the nominee of the custodial parent may constitute good cause for the court to order that this notice not be delivered. *On or before July 1, 2007, the Judicial Council shall adopt a rule of court that shall establish uniform standards for good cause exceptions to the notice required by this subdivision, limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward or the estate of the proposed conservatee or ward from irreparable harm.*

(d) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within ~~30~~ 15 days of the granting of the temporary guardianship, the court shall set a hearing within ~~30~~ 15 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten time for notice of the hearing.

(e) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(f) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or

1 conservator or these appointments may be requested in separate
2 petitions.

3 (g) If the court suspends powers of the guardian or conservator
4 under Section 2334 or 2654 or under any other provision of this
5 division, the court may appoint a temporary guardian or
6 conservator to exercise those powers until the powers are
7 restored to the guardian or conservator or a new guardian or
8 conservator is appointed.

9 (h) If for any reason a vacancy occurs in the office of guardian
10 or conservator, the court, on a petition filed under subdivision (a)
11 or on its own motion, may appoint a temporary guardian or
12 conservator to exercise the powers of the guardian or conservator
13 until a new guardian or conservator is appointed.

14 *SEC. 13. Section 2250.1 is added to the Probate Code, to*
15 *read:*

16 *2250.1. (a) The proposed temporary conservatee shall attend*
17 *the hearing except in the following cases:*

18 *(1) If the proposed temporary conservatee is out of the state*
19 *when served and is not the petitioner.*

20 *(2) If the proposed temporary conservatee is unable to attend*
21 *the hearing by reason of medical inability.*

22 *(3) If the court investigator has visited the proposed*
23 *conservatee prior to the hearing and the court investigator has*
24 *reported to the court that the proposed temporary conservatee*
25 *has expressly communicated that the proposed conservatee all of*
26 *the following:*

27 *(A) Is not willing to attend the hearing.*

28 *(B) Does not wish to contest the establishment of the*
29 *temporary conservatorship.*

30 *(C) Does not object to the proposed temporary conservator or*
31 *prefer that another person act as temporary conservatee need not*
32 *attend the hearing.*

33 *(4) If the court determines that the proposed conservatee*
34 *cannot attend the hearing, and holding the hearing in the*
35 *absence of the proposed conservatee is necessary to protect the*
36 *conservatee from imminent harm.*

37 *(b) Emotional or psychological instability is not good cause*
38 *for the absence of the proposed temporary conservatee from the*
39 *hearing unless, by reason of that instability, attendance at the*

1 *hearing is likely to cause serious and immediate physiological*
2 *damage to the proposed temporary conservatee.*

3 *SEC. 14. Section 2250.2 is added to the Probate Code, to*
4 *read:*

5 *2250.2. (a) Regardless of whether the proposed temporary*
6 *conservatee attends the hearing, the court investigator shall do*
7 *all of the following prior to the hearing, or, if not feasible before*
8 *the hearing, in no event later than 48 hours after the hearing:*

9 *(1) Interview the proposed conservatee personally.*

10 *(2) Inform the proposed conservatee of the contents of the*
11 *citation, of the nature, purpose, and effect of the proceeding, and*
12 *of the right of the proposed conservatee to oppose the*
13 *proceeding, to attend the hearing, to have the matter of the*
14 *establishment of the conservatorship tried by jury, to be*
15 *represented by legal counsel if the proposed conservatee so*
16 *chooses, and to have legal counsel appointed by the court if*
17 *unable to retain legal counsel.*

18 *(3) Determine whether it appears that the proposed*
19 *conservatee is unable to attend the hearing and, if able to attend,*
20 *whether the proposed conservatee is willing to attend the*
21 *hearing.*

22 *(4) Determine whether the proposed conservatee wishes to*
23 *contest the establishment of the conservatorships.*

24 *(5) Determine whether the proposed conservatee objects to the*
25 *proposed conservator or prefers another person to act as*
26 *conservator.*

27 *(6) Report to the court, in writing, concerning all of the*
28 *foregoing.*

29 *(b) If the investigator does not visit the conservatee until after*
30 *the hearing at which a conservator was appointed, and the*
31 *conservatee objects to the appointment of the temporary*
32 *conservator, the court shall set the matter for an expedited*
33 *hearing within 10 days of the investigator's visit.*

34 *SEC. 15. Section 2253 of the Probate Code is amended to*
35 *read:*

36 *2253. (a) If a temporary conservator of the person proposes*
37 *to fix the residence of the conservatee at a place other than that*
38 *where the conservatee resided prior to the commencement of the*
39 *proceedings, ~~such~~ that power shall be requested of the court in*
40 *writing, unless ~~such~~ the change of residence is required of the*

conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if ~~such~~ the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

~~(b) If the court so directs—~~*Unless the court for good cause orders otherwise,* the court investigator shall do all of the following:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.

(3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the

1 conservatee's express communications concerning representation
2 by legal counsel and whether the conservatee is not willing to
3 attend the hearing and does not wish to oppose the request.

4 (c) Within seven days of the date of filing of a temporary
5 conservator's request to remove the conservatee from his or her
6 previous place of residence, the court shall hold a hearing on the
7 request.

8 (d) The conservatee shall be present at the hearing except in
9 the following cases:

10 (1) Where the conservatee is unable to attend the hearing by
11 reason of medical inability. Emotional or psychological
12 instability is not good cause for the absence of the conservatee
13 from the hearing unless, by reason of such instability, attendance
14 at the hearing is likely to cause serious and immediate
15 physiological damage to the conservatee.

16 (2) Where the court investigator has reported to the court that
17 the conservatee has expressly communicated that the conservatee
18 is not willing to attend the hearing and does not wish to oppose
19 the request, and the court makes an order that the conservatee
20 need not attend the hearing.

21 (e) If the conservatee is unable to attend the hearing because
22 of medical inability, such inability shall be established (1) by the
23 affidavit or certificate of a licensed medical practitioner or (2) if
24 the conservatee is an adherent of a religion whose tenets and
25 practices call for reliance on prayer alone for healing and is under
26 treatment by an accredited practitioner of that religion, by the
27 affidavit of the practitioner. The affidavit or certificate is
28 evidence only of the conservatee's inability to attend the hearing
29 and shall not be considered in determining the issue of need for
30 the establishment of a conservatorship.

31 (f) At the hearing, the conservatee has the right to be
32 represented by counsel and the right to confront and
33 cross-examine any witness presented by or on behalf of the
34 temporary conservator and to present evidence on his or her own
35 behalf.

36 (g) The court may approve the request to remove the
37 conservatee from the previous place of residence only if the court
38 finds (1) that change of residence is required to prevent
39 irreparable harm to the conservatee and (2) that no means less
40 restrictive of the conservatee's liberty will suffice to prevent such

1 harm. If an order is made authorizing the temporary conservator
2 to remove the conservatee from the previous place of residence,
3 the order shall specify the specific place wherein the temporary
4 conservator is authorized to place the conservatee. The temporary
5 conservator may not be authorized to remove the conservatee
6 from this state unless it is additionally shown that such removal
7 is required to permit the performance of specified nonpsychiatric
8 medical treatment, consented to by the conservatee, which is
9 essential to the conservatee's physical survival. A temporary
10 conservator who willfully removes a temporary conservatee from
11 this state without authorization of the court is guilty of a felony.

12 (h) Subject to subdivision (e) of Section 2252, the court shall
13 also order the temporary conservator to take all reasonable steps
14 to preserve the status quo concerning the conservatee's previous
15 place of residence.

16 *SEC. 16. Section 2321 of the Probate Code is amended to*
17 *read:*

18 2321. (a) Notwithstanding any other provision of law, the
19 court in a conservatorship proceeding may not waive the filing of
20 a bond *or reduce the amount of bond required*, without a good
21 cause *determination by the court which shall include a*
22 *determination by the court that the conservator will not suffer*
23 *harm as a result of the waiver or reduction of the bond*. Good
24 cause may not be established merely by the conservator having
25 filed a bond in another or prior proceeding.

26 (b) In a conservatorship proceeding, where the conservatee,
27 having sufficient capacity to do so, has waived the filing of a
28 bond, the court in its discretion may permit the filing of a bond in
29 an amount less than would otherwise be required under Section
30 2320.

31 *SEC. 17. Section 2340 of the Probate Code is amended to*
32 *read:*

33 ~~2340. (a) No superior court may appoint a private~~
34 ~~professional conservator or private professional guardian, or~~
35 ~~permit any person to continue to serve as a private professional~~
36 ~~conservator or private professional guardian, pursuant to Chapter~~
37 ~~5 (commencing with Section 2350) or Chapter 6 (commencing~~
38 ~~with Section 2400) unless the conservator or guardian has filed~~
39 ~~the information required by Sections 2342 and 2343 with the~~
40 ~~clerk of the court in each county where a petition for appointment~~

1 ~~has been filed.~~ *A superior court shall not appoint a professional*
2 *conservator guardian or permit any person to serve as a*
3 *professional conservator or professional guardian pursuant to*
4 *Chapter 5 (commencing with Section 2350) or Chapter 6*
5 *(commencing with Section 2400), unless the professional*
6 *conservator or guardian is licensed by the Department of*
7 *Consumer Affairs pursuant to Chapter 6 (commencing with*
8 *Section 6500) of Division 3 of the Business and Professions*
9 *Code. If a conservator or guardian is exempted from licensure*
10 *requirements under that chapter, the court may appoint that*
11 *person to serve as a conservator or guardian without a*
12 *professional conservator or guardian license by the Department*
13 *of Consumer Affairs.*

14 (b) No superior court may appoint a private professional
15 trustee unless the trustee has filed the information required by
16 Sections 2342 and 2343 with the clerk of the court in each county
17 where a petition for appointment has been filed.

18 SEC. 18. Section 2342 of the Probate Code is amended to
19 read:

20 2342. (a) All ~~private professional conservators, private~~
21 ~~professional guardians, and private professional trustees~~ shall file
22 annually with the clerk of the court a statement, under penalty of
23 perjury, containing the following information:

24 (1) His or her educational background and professional
25 experience.

26 (2) At least three professional references.

27 (3) ~~The names of the conservator's or guardian's current~~
28 ~~conservatees or the trusts currently administered by the trustee.~~

29 (4) ~~The aggregate dollar value of all assets currently under the~~
30 ~~conservator's, guardian's, or trustee's supervision.~~

31 (5)

32 (4) ~~The conservator's, guardian's, or trustee's addresses and~~
33 ~~telephone numbers for his or her place of business and place of~~
34 ~~residence.~~

35 (6)

36 (5) ~~Whether the conservator, guardian, or trustee has ever been~~
37 ~~removed for cause as conservator or guardian or trustee or has~~
38 ~~resigned as conservator or guardian or trustee in a specific case,~~
39 ~~the circumstances causing that removal or resignation, and the~~
40 ~~case names, court locations, and case numbers.~~

1 ~~(7)~~

2 ~~(6)~~ The case names, court locations, and case numbers of all
3 ~~conservatorship, guardianship, or trust cases which are closed for~~
4 ~~which the private professional conservator, private professional~~
5 ~~guardian, or private professional trustee served as the~~
6 ~~conservator, guardian, or trustee.~~

7 (b) Upon filing of a petition for appointment, a ~~private~~
8 ~~professional conservator, private professional guardian, and~~
9 private professional trustee shall state that he or she is a ~~private~~
10 ~~professional conservator or private professional guardian or~~
11 private professional trustee, and that the information required by
12 this section is on file with the clerk of the court.

13 (c) The clerk of the court shall order a background fingerprint
14 check from the Department of Justice and may request a
15 background fingerprint check from the Federal Bureau of
16 Investigation on each ~~private professional conservator, private~~
17 ~~professional guardian, or private professional trustee.~~ The
18 background check shall include a record of all arrests resulting in
19 conviction and all arrests for which final disposition is pending.
20 The Department of Justice shall retain these fingerprints in its
21 files and shall provide any subsequent arrest information to the
22 clerk of the court pursuant to Section 11105.2 of the Penal Code
23 until notified by the clerk of the court that the person is no longer
24 serving in the capacity of a ~~private professional conservator,~~
25 ~~private professional guardian, or private professional trustee.~~ The
26 superior court shall review the background fingerprint check
27 prior to the appointment of a ~~private professional conservator,~~
28 ~~private professional guardian, or private professional trustee.~~ The
29 court shall review annual updates to the criminal background
30 check on persons currently serving in the capacity of a ~~private~~
31 ~~professional conservator, private professional guardian, or~~
32 private professional trustee under the court's jurisdiction. The
33 background fingerprint check may be dispensed with by the court
34 if the petitioner was appointed as a ~~private professional~~
35 ~~conservator, private professional guardian, or private~~
36 professional trustee, or served in the capacity of a ~~private~~
37 ~~professional conservator, private professional guardian, or~~
38 private professional trustee, during the previous year and a
39 background fingerprint check was previously made.

(d) The information required by this section shall be made available to the court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the conservator or guardian or trustee, but shall otherwise be kept confidential.

(e) This section applies to all ~~private professional conservators, private professional guardians, and private professional trustees~~ regardless of the date of appointment.

SEC. 19. Section 2342.5 of the Probate Code is repealed.

~~2342.5. (a) Notwithstanding Section 2342, all natural persons who are authorized by a private entity, which is exempt from federal income taxation pursuant to Section 501(C)(3) of the Internal Revenue Code or is exempt from state taxes pursuant to Sections 23701 and 23701d of the Revenue and Taxation Code, to perform the functions of a conservator may elect to annually file a statement required by subdivision (a) of Section 2342 only with the clerk of the court of the county in which the private entity has its principal place of business if all of the following requirements are met:~~

~~(1) The private entity provides conservatorship services to 10 or more conservatees with assets of less than twenty thousand dollars (\$20,000) each.~~

~~(2) At least 40 percent of the total number of conservatees served by the private entity in the state have assets of less than twenty thousand dollars (\$20,000) each.~~

~~(3) The total annual fees received by the private entity for providing conservatorship services do not exceed 5 percent of the total assets of all the conservatees served by the private entity.~~

~~Only the clerk of the court and superior court of the county in which this statement is filed shall be required to comply with the background check requirements of Section 2342 for this statement.~~

~~(b) Upon filing of a petition for appointment, a private professional conservator described in subdivision (a) shall state that he or she is a private professional conservator and the name of the county in which the information required by Section 2342 is on file.~~

~~(c) A private professional conservator described in subdivision (a) shall meet the educational requirements generally established by the Judicial Council for private professional conservators.~~

1 *SEC. 20. Section 2343 of the Probate Code is amended to*
2 *read:*

3 2343. The clerk of the court shall charge each private
4 professional ~~conservator or private professional guardian~~ *trustee*
5 an annual filing fee that does not exceed the average
6 ~~per-conservator or per-guardian~~ *trustee* annual cost in complying
7 with this article. This fee shall also include the cost of submitting
8 the fingerprint card to the Department of Justice. This fee shall
9 be distributed to the court in which it was collected.

10 *SEC. 21. Section 2344 of the Probate Code is repealed.*

11 ~~2344. (a) A private professional conservator or a private~~
12 ~~professional guardian shall meet the requirements for education~~
13 ~~and experience established by the Judicial Council prior to~~
14 ~~appointment as conservator or guardian.~~

15 ~~(b) A private professional conservator or private professional~~
16 ~~guardian that fails to fulfill the educational requirements~~
17 ~~established by the Judicial Council for appointment as a private~~
18 ~~professional conservator or a private professional guardian may~~
19 ~~not register with the Statewide Registry.~~

20 ~~(c) This section does not apply to an individual who is~~
21 ~~appointed by the court pursuant to Section 1514 as a guardian of~~
22 ~~the person only.~~

23 *SEC. 22. Section 2410 is added to the Probate Code, to read:*

24 2410. *On or before July 1, 2007, the Judicial Council shall*
25 *adopt a rule of court that shall require uniform standards of*
26 *conduct for actions that conservators and guardians may take*
27 *under this chapter on behalf of conservatees and wards to ensure*
28 *that the estate of conservatees or wards are maintained and*
29 *conserved as appropriate and to prevent risk of loss or harm to*
30 *the conservatees or wards. This rule shall include at a minimum*
31 *standards for determining the fees that may be charged to*
32 *conservatees or wards and standards for asset management.*

33 *SEC. 23. Section 2620 of the Probate Code is amended to*
34 *read:*

35 2620. (a) At the expiration of ~~one year~~ *six months* from the
36 time of appointment and thereafter not less frequently than
37 ~~biennially~~ *annually*, unless otherwise ordered by the court *to be*
38 *more frequent*, the guardian or conservator shall present the
39 accounting of the assets of the estate of the ward or conservatee
40 to the court for settlement and allowance in the manner provided

1 in Chapter 4 (commencing with Section 1060) of Part 1 of
2 Division 3.

3 (b) The final court accounting of the guardian or conservator
4 following the death of the ward or conservatee shall include a
5 court accounting for the period that ended on the date of death
6 and a separate accounting for the period subsequent to the date of
7 death.

8 (c) Along with each court accounting, the guardian or
9 conservator shall file *all supporting documents for all charges,*
10 *including* all original account statements from any institution, as
11 defined in Section 2890, or any financial institution, as defined in
12 Section 2892, in which money or other assets of the estate are
13 held or deposited, showing the balance ~~as of the close of the~~
14 *through the entire* accounting period of the court accounting. If
15 the court accounting is the first court accounting of the
16 guardianship or conservatorship, the guardian or conservator
17 shall provide to the court the account statement for the account
18 balance immediately preceding the date the conservator or
19 guardian was appointed and the account statement or statements
20 for the account ~~through~~ *throughout the accounting period until*
21 the closing date of the first court accounting. This subdivision
22 shall not apply to the public guardian if the money belonging to
23 the estate is pooled with money belonging to other estates
24 pursuant to Section 2940 and Article 3 (commencing with
25 Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in
26 this section shall affect any other duty or responsibility of the
27 public guardian with regard to managing money belonging to the
28 estate or filing accountings with the court.

29 (d) If any document to be filed with the court under this
30 section contains the ward or conservatee's social security number
31 or any other personal information regarding the ward or
32 conservatee that would not ordinarily be disclosed in a court
33 accounting, an inventory and appraisal, or other nonconfidential
34 pleadings filed in the action, the account statement shall be
35 attached to a separate affidavit describing the character of the
36 document in proper form for filing, captioned "CONFIDENTIAL
37 FINANCIAL STATEMENT" in capital letters. Except as
38 otherwise ordered by the court, the clerk of the court shall keep
39 the document confidential except to the court and subject to
40 disclosure only upon an order of the court.

1 (e) *Each accounting is subject to random and full audit by the*
2 *court. Each accounting that the court determines may not be*
3 *accurate shall be subject to a full audit. The audit shall include a*
4 *review of all documents necessary to determine the accuracy of*
5 *the accounting. If the audit reveals any material error, the court*
6 *shall immediately do one of the following:*

7 (1) *Remove the conservator or guardian as provided under*
8 *Chapter 9 (commencing with Section 2650).*

9 (2) *Hold a hearing to determine the severity of the error and*
10 *whether the conservator or guardian should be removed as*
11 *provided under Chapter 9 (commencing with Section 2650).*

12 (3) *Make a finding that the error was harmless.*

13 SEC. 24. *Section 2620.2 of the Probate Code is amended to*
14 *read:*

15 2620.2. (a) *Whenever the conservator or guardian has failed*
16 *to file an account as required by Section 2620, the court shall*
17 *require that written notice be given to the conservator or guardian*
18 *and the attorney of record for the conservatorship or guardianship*
19 *directing the conservator or guardian to file an account and to set*
20 *the account for hearing before the court within 30 days of the*
21 *date of the notice or, if the conservator or guardian is a public*
22 *agency, within 45 days of the date of the notice.*

23 (b) *Failure to file the account within the time specified in the*
24 *notice and any additional time allowed by the court under*
25 *subdivision (a), or within 45 days of actual receipt of the notice,*
26 *whichever is later, shall constitute a contempt of the authority of*
27 *the court as described in Section 1209 of the Code of Civil*
28 *Procedure.*

29 (c) *If the conservator or guardian does not file an account with*
30 *all appropriate supporting documentation and set the account for*
31 *hearing as required by Section 2620 the court shall do one or*
32 *more of the following and shall report that action to the board*
33 *established pursuant to Section 6504 of the Business and*
34 *Professions Code:*

35 (1) *Remove the conservator or guardian as provided under*
36 *Article 1 (commencing with Section 2650) of Chapter 9 of Part 4*
37 *of Division 4.*

38 (2) *Issue and serve a citation requiring a guardian or*
39 *conservator who does not file a required account to appear and*
40 *show cause why the guardian or conservator should not be*

1 punished for contempt. If the guardian or conservator purposely
2 evades personal service of the citation, the guardian or
3 conservator shall be *immediately* removed from office.

4 (3) Suspend the powers of the conservator or guardian and
5 appoint a temporary conservator or guardian, who shall take
6 possession of the assets of the conservatorship or guardianship,
7 investigate the actions of the conservator or guardian, and
8 petition for surcharge if this is in the best interest of the ward or
9 conservatee. Compensation for the temporary conservator or
10 guardian, and counsel for the temporary conservator or guardian,
11 shall be treated as a surcharge against the conservator or
12 guardian, and if unpaid shall be considered a breach of condition
13 of the bond, ~~unless for good cause shown the court finds that the~~
14 ~~temporary conservator or guardian, and counsel for the~~
15 ~~temporary conservator or guardian, shall be compensated from~~
16 ~~the estate.~~

17 (4) (A) ~~Appoint legal counsel to represent the ward or~~
18 ~~conservatee if the court has not suspended the powers of the~~
19 ~~conservator or guardian and appoint a temporary conservator or~~
20 ~~guardian pursuant to paragraph (3). Compensation for the~~
21 ~~counsel appointed for the ward or conservatee shall be treated as~~
22 ~~a surcharge against the conservator or guardian, and if unpaid~~
23 ~~shall be considered a breach of a condition on the bond, unless~~
24 ~~for good cause shown the court finds that counsel for the ward or~~
25 ~~conservatee shall be compensated according to Section 1470. The~~
26 ~~court shall order the legal counsel to do one or more of the~~
27 ~~following:~~

28 (i) ~~Investigate the actions of the conservator or guardian, and~~
29 ~~petition for surcharge if this is in the best interest of the ward or~~
30 ~~conservatee.~~

31 (ii) ~~Recommend to the court whether the conservator or~~
32 ~~guardian should be removed.~~

33 (iii) ~~Recommend to the court whether money or other property~~
34 ~~in the estate should be deposited pursuant to Section 2453,~~
35 ~~2453.5, 2454, or 2455 to be subject to withdrawal only upon~~
36 ~~authorization of the court.~~

37 (B) ~~After resolution of the matters for which legal counsel was~~
38 ~~appointed in subparagraph (A), the court shall terminate the~~
39 ~~appointment of legal counsel, unless the court determines that~~

1 continued representation of the ward or conservatee and the
2 estate is necessary and reasonable.

3 ~~(5) Order that money or property in the estate be deposited~~
4 ~~pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to~~
5 ~~withdrawal only upon authorization of the court.~~

6 ~~(6) Grant~~

7 *(4) If the conservatee is exempt from the licensure*
8 *requirements of Chapter 6 (commencing with Section 6500) of*
9 *Division 3 of the Business and Professions Code, upon ex parte*
10 *application or such notice as the court may require, time to file*
11 *the account, not to exceed an additional-60 30 days after the*
12 *expiration of the deadline described in subdivision (a), where the*
13 *court finds there is good cause and that the estate is adequately*
14 *bonded. After expiration of any extensions, if the account has not*
15 *been filed, the court shall take action as described in paragraphs*
16 *(1) to-(5) (3), inclusive.*

17 (d) Subdivision (c) does not preclude the court from
18 additionally taking any other appropriate action in response to a
19 failure to file a proper accounting in a timely manner.

20 *SEC. 25. Section 2623 of the Probate Code is amended to*
21 *read:*

22 *2623. The-(a) Except as provided in subsection (b) of this*
23 *section, the guardian or conservator shall be allowed all of the*
24 *following:*

25 ~~(a)~~

26 *(1) The amount of the reasonable expenses incurred in the*
27 *exercise of the powers and the performance of the duties of the*
28 *guardian or conservator (including, but not limited to, the cost of*
29 *any surety bond furnished, reasonable attorney's fees, and such*
30 *compensation for services rendered by the guardian or*
31 *conservator of the person as the court determines is just and*
32 *reasonable).*

33 ~~(b)~~

34 *(2) Such compensation for services rendered by the guardian*
35 *or conservator as the court determines is just and reasonable.*

36 ~~(c)~~

37 *(3) All reasonable disbursements made before appointment as*
38 *guardian or conservator.*

39 ~~(d)~~

1 (4) In the case of termination other than by the death of the
2 ward or conservatee, all reasonable disbursements made after the
3 termination of the guardianship or conservatorship but prior to
4 the discharge of the guardian or conservator by the court.

5 ~~(e)~~

6 (5) In the case of termination by the death of the ward or
7 conservatee, all reasonable expenses incurred prior to the
8 discharge of the guardian or conservator by the court for the
9 custody and conservation of the estate and its delivery to the
10 personal representative of the estate of the deceased ward or
11 conservatee or in making other disposition of the estate as
12 provided for by law.

13 *(b) The guardian or conservator shall not be compensated*
14 *from the estate for any costs or fees that the guardian or*
15 *conservator incurred in unsuccessfully opposing a petition, or*
16 *other request or action, made by or on behalf of the ward or*
17 *conservatee.*

18 SEC. 26. Section 2640 of the Probate Code is amended to
19 read:

20 2640. (a) At any time after the filing of the inventory and
21 appraisal, but not before the expiration of 90 days from the
22 issuance of letters or any other period of time as the court for
23 good cause orders, the guardian or conservator of the estate may
24 petition the court for an order fixing and allowing compensation
25 to any one or more of the following:

26 (1) The guardian or conservator of the estate for services
27 rendered to that time.

28 (2) The guardian or conservator of the person for services
29 rendered to that time.

30 (3) The attorney for services rendered to that time by the
31 attorney to the guardian or conservator of the person or estate or
32 both.

33 (b) Notice of the hearing shall be given for the period and in
34 the manner provided in Chapter 3 (commencing with Section
35 1460) of Part 1.

36 (c) Upon the hearing, the court shall make an order allowing
37 (1) any compensation requested in the petition the court
38 determines is just and reasonable to the guardian or conservator
39 of the estate for services rendered or to the guardian or
40 conservator of the person for services rendered, or to both, and

(2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(d) Notwithstanding the provisions of subdivision (c), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee.

SEC. 27. Section 2640.1 of the Probate Code is repealed.

~~2640.1. (a) If a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before the expiration of 90 days from the issuance of letters, the person who petitioned for the appointment of a conservator but was not appointed and that person's attorney may petition the court for an order fixing and allowing compensation and reimbursement of costs.~~

~~(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.~~

~~(c) Upon the hearing, the court shall make an order to allow (1) any compensation or costs requested in the petition the court determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith, and (2) any compensation or costs requested in the petition the court determines is just and reasonable to the attorney for that person, for his or her services rendered in connection with and to facilitate the appointment of a~~

~~conservator, and costs incurred in connection therewith. The compensation and costs so allowed shall thereupon be charged to the estate of the conservatee. If a conservator of the estate is not appointed, but a conservator of the person is appointed, the compensation and costs so allowed shall be ordered by the court to be paid from property belonging to the conservatee, whether held outright, in trust, or otherwise.~~

~~(d) It is the intent of the Legislature for this section to have retroactive effect.~~

SEC. 28. Section 2641 of the Probate Code is amended to read:

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing any compensation the court determines just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.

(c) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee.

SEC. 29. Section 2850 of the Probate Code is amended to read:

2850. (a) (1) The Department of ~~Justice~~ *Consumer Affairs* shall maintain a Statewide Registry and shall make all information in the registry available to the court for any purpose, but shall otherwise keep this information confidential, except as provided in this section.

(2) (A) On request, the registry shall disclose to the public the following:

(i) Whether an individual is or is not registered with the Statewide Registry.

1 (ii) Whether the Statewide Registry contains any information
2 filed pursuant to subdivision (d) for a specific individual
3 regarding his or her duties as a ~~conservator, guardian, or trustee~~.

4 (iii) The educational background and professional experience
5 of an individual registered with the Statewide Registry.

6 (B) Upon written request by a member of the public, the
7 registry shall provide access to any information filed with the
8 registry pursuant to subdivision (d) regarding a ~~conservator,~~
9 ~~guardian, or trustee~~.

10 (3) Except as otherwise provided in Section 2854, all persons
11 who wish to serve as a ~~conservator, guardian, or trustee~~ or who
12 are currently serving as a ~~conservator, guardian, or trustee~~ shall
13 register with the Statewide Registry and shall reregister every
14 three years thereafter. "Registration" means the filing of a
15 declaration pursuant to subdivision (b).

16 (b) All ~~conservators, guardians, and~~ trustees required to file
17 information with the clerk of the court pursuant to Section 2340
18 or required to register pursuant to this chapter shall file a signed
19 declaration with the Statewide Registry. A person who signs a
20 declaration pursuant to this subdivision asserting the truth of any
21 material matter which he or she knows to be false is guilty of a
22 misdemeanor punishable by imprisonment for up to one year in a
23 county jail, or a fine of not more than two thousand dollars
24 (\$2,000), or both that fine and imprisonment. The declaration
25 shall contain the following information:

26 (1) Full name.

27 (2) Professional name, if different from paragraph (1).

28 (3) Business address.

29 (4) Business telephone number or numbers.

30 (5) His or her educational background and professional
31 experience, including verification of any college or graduate
32 degree claimed.

33 (6) The names of the ~~conservator's current conservatees, the~~
34 ~~guardian's current wards, or the current trusts administered by~~
35 ~~the trustee~~.

36 (7) The aggregate dollar value of all assets currently under the
37 ~~conservator's, guardian's, or trustee's~~ supervision.

38 (8) Whether he or she has ever been removed for cause or
39 resigned as ~~conservator, guardian, or trustee~~ in a specific case,

1 the circumstances of that removal or resignation, and the case
2 names, court locations, and case numbers.

3 ~~(9) In the case of a private professional conservator or a~~
4 ~~private professional guardian, compliance with the educational~~
5 ~~requirements established by the Judicial Council for private~~
6 ~~professional conservators and private professional guardians.~~

7 (c) The Department of ~~Justice~~ *Consumer Affairs* may charge a
8 reasonable fee to persons registering and reregistering with the
9 Statewide Registry for the cost of that registration. The
10 Department of ~~Justice~~ *Consumer Affairs* shall issue a certificate
11 of registration to each registrant.

12 (d) If a court makes a finding that a ~~conservator, guardian, or~~
13 ~~trustee~~ has not properly performed the duties of a ~~conservator,~~
14 ~~guardian, or~~ trustee, and that finding results in an order for a
15 surcharge for other than nominal damages or for removal of the
16 ~~conservator, guardian, or~~ trustee, the court clerk shall forward a
17 copy of the court's findings and order to the Statewide Registry,
18 which shall include this information in the file of that
19 ~~conservator, guardian, or~~ trustee.

20 *SEC. 30. Section 2851 of the Probate Code is amended to*
21 *read:*

22 2851. (a) A court may not appoint a person as a ~~conservator,~~
23 ~~guardian, or~~ trustee unless that person, if required to register
24 under Section 2850, is registered with the Statewide Registry.

25 (b) ~~Any person serving as a conservator or guardian prior to~~
26 ~~January 1, 2000, who does not register with the Statewide~~
27 ~~Registry by either January 1, 2001, or by the date of the next~~
28 ~~required review pursuant to Section 1850, whichever is sooner,~~
29 ~~shall be removed as a conservator or guardian by the court.~~ A
30 trustee required to register under Section 2850 who has not
31 registered with the Statewide Registry on or before January 1,
32 2005, shall be removed as a trustee by the court, unless the court
33 finds reasonable grounds not to do so. If the court finds
34 reasonable grounds exist for not removing the trustee for failing
35 to register on or before January 1, 2005, the court shall order the
36 trustee to register with the Statewide Registry within 90 days of
37 the court's order and shall remove the trustee if the trustee has
38 failed to register at the end of the 90-day period.

39 (c) In appointing, continuing the appointment, or removing a
40 person as ~~conservator, guardian, or~~ trustee, the court shall

1 examine and consider the information contained in the Statewide
2 Registry for that person. The information contained in the
3 Statewide Registry shall be made available to the court for this
4 purpose, but shall otherwise be kept confidential, except as
5 provided by law.

6 *SEC. 31. Section 2852 of the Probate Code is amended to*
7 *read:*

8 2852. (a) Any person required to register under Section 2850
9 who serves as a ~~conservator, guardian, or trustee~~ without being
10 registered with the Statewide Registry, who commits fraud in
11 registering, who falsely asserts that he or she is registered, or
12 who makes false claims or representations as to the nature of his
13 or her file contained in the registry, shall be subject to a civil
14 penalty in the amount of two hundred dollars (\$200) for the first
15 violation and a civil penalty in the amount of five hundred dollars
16 (\$500) for each subsequent violation, to be assessed and
17 collected in a civil action brought by the Department of ~~Justice~~
18 *Consumer Affairs*. All civil penalties collected shall be deposited
19 in the General Fund. A person who lawfully delays registration
20 pursuant to subdivision (b) of Section 2851 shall not be subject to
21 a civil penalty for serving as a ~~conservator, guardian, or trustee~~
22 without being registered until the time that subdivision (b) of
23 Section 2851 authorizes his or her removal for failure to register.

24 (b) Any court that removes a ~~conservator, guardian, or trustee~~
25 for cause, and any court that has accepted the resignation of a
26 ~~conservator, guardian, or trustee~~, shall notify the Statewide
27 Registry of that removal or resignation and the reason therefor.
28 The courts shall consider that information prior to the
29 appointment of a person or entity pursuant to a subsequent
30 petition for appointment as ~~conservator, guardian, or trustee~~.

31 *SEC. 32. Section 2853 of the Probate Code is amended to*
32 *read:*

33 2853. Notwithstanding any other provision of this chapter, in
34 cases of urgency, where circumstances and justice warrant the
35 appointment of a ~~conservator, guardian, or trustee~~ and time is
36 limited, a court may appoint a person as ~~conservator, guardian, or~~
37 trustee without consulting the Statewide Registry or requiring
38 registration prior to appointment.

39 *SEC. 33. Section 2854 of the Probate Code is amended to*
40 *read:*

1 ~~2854. (a) This chapter does not apply to any public~~
2 ~~conservator or public guardian with regard to his or her official~~
3 ~~acts in that capacity.~~

4 ~~(b) This chapter does not apply to any conservator, guardian,~~
5 ~~or trustee when the person is related to the conservatee, ward, or~~
6 ~~trustor by blood, marriage, adoption, registered domestic~~
7 ~~partnership, or a relationship that satisfies the requirements of~~
8 ~~subdivision (a) and paragraphs (1) to (4), inclusive, and~~
9 ~~paragraph (6) of subdivision (b) of Section 297 of the Family~~
10 ~~Code.~~

11 ~~(e)~~
12 ~~(b) This chapter does not apply to any trustee who is serving~~
13 ~~for the benefit of not more than three people or not more than~~
14 ~~three families, or a combination of people or families that does~~
15 ~~not total more than three. The number of trust beneficiaries does~~
16 ~~not count for the purposes of calculating if a trustee falls within~~
17 ~~this exclusion. A trust excluded under subdivision (a) or (b) does~~
18 ~~not count for the purpose of calculating if a trustee falls within~~
19 ~~this exclusion. For the purposes of this subdivision, family means~~
20 ~~people who are related by blood, marriage, adoption, registered~~
21 ~~domestic partnership, or a relationship that satisfies the~~
22 ~~requirements of subdivision (a) and paragraphs (1) to (4),~~
23 ~~inclusive, and paragraph (6) of subdivision (b) of Section 297 of~~
24 ~~the Family Code.~~

25 ~~(d) This chapter does not apply to any conservator or guardian~~
26 ~~who is not required to file information with the clerk of the court~~
27 ~~pursuant to Section 2340, to any person or entity subject to the~~
28 ~~oversight of a local government, including an employee of a city,~~
29 ~~county, or city and county, or to any person or entity subject to~~
30 ~~the oversight of the state or federal government, including an~~
31 ~~attorney licensed to practice law in the State of California who~~
32 ~~acts as trustee of only attorney client trust accounts, as defined in~~
33 ~~Section 6211 of the Business and Professions Code.~~

34 ~~(e) This chapter does not apply to any conservator who resided~~
35 ~~in the same home with the conservatee immediately prior to the~~
36 ~~condition or event that gave rise to the necessity of a~~
37 ~~conservatorship. This subdivision does not create any order or~~
38 ~~preference of appointment, but simply exempts a conservator~~
39 ~~described by this subdivision from registration.~~

40 ~~(f)~~

(c) This chapter does not apply to a trustee who is any of the following:

(1) Trust companies, as defined in Section 83.

(2) FDIC-insured institutions, their holding companies, subsidiaries, or affiliates. For the purposes of this paragraph, “affiliate” means any entity that shares an ownership interest with or that is under the common control of, the FDIC-insured institution.

(3) Employees of any entity listed in paragraph (1) or (2) while serving as trustees in the scope of their duties.

SEC. 34. Section 2855 of the Probate Code is amended to read:

2855. It is the intent of the Legislature that both:

(a) Counties that provide for registration of ~~conservators, guardians, or~~ trustees continue to do so, and that the Statewide Registry not replace county registration.

(b) Courts maintain oversight over the complaint process in order to safeguard the reputations of ~~conservators, guardians, and~~ trustees against unfounded complaints.

(c) A ~~conservator, guardian, or~~ trustee who is reregistering with the Statewide Registry, after having met all the requirements stated in Section 2850, not be required to reverify previously claimed college or graduate degrees.

SEC. 35. Section 2920 of the Probate Code is amended to read:

2920. (a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

~~(a)~~

(1) The public guardian ~~may~~ shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate *if the criteria for making that appointment have been met. On or before January 2007, the Judicial Council shall develop the criteria.*

~~(b)~~

(2) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the

1 court's own motion in a pending proceeding or in a proceeding
2 commenced for that purpose. The court shall not make an order
3 under this subdivision except after notice to the public guardian
4 for the period and in the manner provided in Chapter 3
5 (commencing with Section 1460) of Part 1, consideration of the
6 alternatives, and a determination by the court that the
7 appointment is necessary. The notice and hearing under this
8 subdivision may be combined with the notice and hearing
9 required for appointment of a guardian or conservator.

10 *(b) The public guardian may apply for appointment as*
11 *guardian or conservator of the person, the estate, or both on*
12 *behalf of any person domiciled in the county who requires a*
13 *guardian or conservator and who has assets of no more than*
14 *_____ dollars (\$_____).*

15 *(c) The public guardian shall personally visit each proposed*
16 *conservatee or ward within 48 hours of receiving notice of the*
17 *need for assistance.*

18 *SEC. 36. Division 8.7 (commencing with Section 9800) is*
19 *added to the Welfare and Institutions Code, to read:*

20
21 *DIVISION 8.7. CONSERVATORSHIP OMBUDSMAN*
22

23 *9800. There is within the California Department of Aging an*
24 *Office of the Conservatorship Ombudsman.*

25 *9801. (a) The office shall be under the direction of a chief*
26 *executive officer who shall be known as the Conservatorship*
27 *Ombudsman. The Conservatorship Ombudsman shall be*
28 *appointed by the director and shall report directly to the*
29 *director. He or she shall devote his or her entire time to the*
30 *duties of his or her position, and shall receive the salary*
31 *otherwise provided by law.*

32 *(b) Any vacancy occurring in the position of Conservatorship*
33 *Ombudsman shall be filled in the same manner as the original*
34 *appointment. Whenever the Conservatorship Ombudsman dies,*
35 *resigns, becomes ineligible to serve for any reason, or is*
36 *removed from office, the director shall appoint an acting*
37 *Conservatorship Ombudsman within 30 days, who shall serve*
38 *until the appointment and qualification of the Conservatorship*
39 *Ombudsman's successor, but in no event longer than four months*
40 *from the occurrence of the vacancy. The acting Conservatorship*

1 *Ombudsman shall exercise during this period all the powers and*
2 *duties of the Conservatorship Ombudsman pursuant to this*
3 *chapter.*

4 9802. (a) *The Conservatorship Ombudsman shall possess at*
5 *least a bachelor's degree, and have a minimum of five years'*
6 *professional experience that shall include at least fiduciary asset*
7 *management and at least three of the following four areas:*

8 (1) *Gerontology, long-term care, or other relevant social*
9 *services or health services programs.*

10 (2) *The legal system and the legislative process.*

11 (3) *Dispute or problem resolution techniques, including*
12 *investigation, mediation, and negotiation.*

13 (4) *Organizational management and program administration.*

14 (b) *The professional experience described in paragraph (a)*
15 *requires any reasonable combination of the fields described in*
16 *that paragraph for a total of five years, and does not require five*
17 *years' experience in each area. At the discretion of the director,*
18 *a master's or doctorate degree relevant to a field described in*
19 *paragraph (a) may be substituted for one or two years,*
20 *respectively, of professional experience. However, the*
21 *applicant's professional experience and field of study leading to*
22 *the master's or doctorate degree shall, nevertheless, include all*
23 *of the fields described in paragraph (a).*

24 9803. (a) *Upon request of the office, the Attorney General*
25 *shall represent the office or the department and the state in*
26 *litigation concerning affairs of the office, unless the Attorney*
27 *General represents another state agency, in which case the*
28 *agency or the office shall be authorized to employ other counsel.*

29 (b) *The Conservatorship Ombudsman may employ technical*
30 *experts and other employees that, in his or her judgment, are*
31 *necessary for the conduct of the business of the office.*

32 9804. *The office may solicit and receive funds, gifts, and*
33 *contributions to support the operations and programs of the*
34 *office. The office may form a foundation eligible to receive*
35 *tax-deductible contributions to support the operations and*
36 *programs of the office. The office shall not solicit or receive any*
37 *funds, gifts, or contributions where the solicitation or receipt*
38 *would jeopardize the independence and objectivity of the office.*

39 9805. (a) *No representative of the office shall be held liable*
40 *for good faith performance of responsibilities under this chapter.*

1 (b) No discriminatory, disciplinary, or retaliatory action shall
2 be taken against any person for any communication made, or
3 information given or disclosed, to aid the office in carrying out
4 its duties and responsibilities, unless the same was done
5 maliciously or without good faith. This subdivision is not
6 intended to infringe on the rights of the employer to supervise,
7 discipline, or terminate an employee for other reasons.

8 (c) All communications by a representative of the office, if
9 reasonably related to the requirements of that individual's
10 responsibilities under this chapter and done in good faith, shall
11 be privileged, and that privilege shall serve as a defense to any
12 action in libel or slander.

13 (d) Any representative of the office shall be exempt from being
14 required to testify in court as to any confidential matters, except
15 as the court may deem necessary to enforce the provisions of this
16 chapter.

17 9806. The department shall be responsible for establishing a
18 statewide uniform reporting system to collect and analyze data
19 relative to complaints regarding conservatorships for the
20 purpose of identifying and resolving significant problems. The
21 department shall submit the data to the Department of Consumer
22 Affairs which is responsible for regulating conservators.

23 9807. (a) The office shall investigate and seek to resolve
24 complaints and concerns communicated by, or on behalf of,
25 conservatees. Complaint investigation shall be done in an
26 objective manner to ascertain the pertinent facts.

27 (b) At the conclusion of any investigation of a complaint, the
28 findings shall be reported to the complainant and to the licensing
29 board established pursuant to Section 6504 of the Business and
30 Professions Code. If the office does not investigate a complaint,
31 the complainant shall be notified in writing of the decision not to
32 investigate and the reasons for the decision.

33 9808. The Conservatorship Ombudsman shall have access to
34 any record of a state or local government agency that is
35 necessary to carry out his or her responsibilities under this
36 chapter, including records rendered confidential.

37 9809. All records and files of the office relating to any
38 complaint or investigation made pursuant to this chapter and the
39 identities of complainants, witnesses, patients, or residents shall
40 remain confidential, unless disclosure is required by court order,

1 *or release of the information is to a law enforcement agency,*
2 *public protective service agency, licensing or certification*
3 *agency in a manner consistent with federal laws and regulations.*
4
5

6 **All matter omitted in this version of the bill**
7 **appears in the bill as amended in Assembly,**
8 **01/04/06.**
9

O